

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

KENNETH PATTON,

Case No. 2:14-cv-00519-LDG-PAL

Plaintiff,

ORDER

v.

(Mot. to Compel – Dkt. #32)

IRA HOLLINGSWORTH,

(Mot. to Strike – Dkt. #39)

Defendant.

This matter is before the Court on Plaintiff Kenneth Patton's Motion for an Order Compelling Discovery (Dkt. #32). The Court has considered the Motion, Defendant Ira Hollingsworth's Response (Dkt. #34), and Plaintiff's Supplement (Dkt. #36). Also before the Court is Defendant's Motion to Strike Plaintiff's Supplement (Dkt. #39). The Court has considered Defendant's Motion, Plaintiff's Response (Dkt. #47), and Defendant's Reply (Dkt. #49). This proceeding was referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(A) and LR IB 1-3 and 1-9.

Plaintiff is a prisoner proceeding in this civil rights case *pro se*. Plaintiff initially filed this action in state court, and on April 7, 2014, Defendants removed it to federal court. Petition for Removal (Dkt. #1). The Court screened Plaintiff's Complaint (Dkt. #8) pursuant to 28 U.S.C.

§ 1915, finding the Complaint stated claims against Defendant for excessive force and retaliation. Screening Order (Dkt. #7).

On December 4, 2014, the Court granted Plaintiff's request for a scheduling order. Scheduling Order (Dkt. #24). Once the Scheduling Order was entered, the parties were permitted to engage in discovery until March 4, 2015, *id.* at ¶ 6, and any discovery motions were to be filed and served no later than February 23, 2015, *id.* at ¶ 3. The Scheduling Order

1 specifically informed the parties that any request to extend a discovery deadline must be received
2 by the Court at least 21 days prior to the expiration of the deadline. *Id.* at ¶ 7.

3 On January 5, 2015, the Court denied Plaintiff's motions to produce documents
4 informing Plaintiff that a motion was not a proper way to request written discovery and that
5 discovery requests to a party must be served on an opposing party who then has 30 days to
6 respond. Order (Dkt. #26). The Court instructed Plaintiff to "carefully review the discovery
7 rules contained in Fed. R. Civ. P. 26–36, and the Local Rules of Practice which also apply to this
8 case." *Id.* at 2. The motion to compel does not indicate that Plaintiff served Defendant with
9 written requests for production or that Plaintiff attempted to obtain these materials from counsel
10 for Defendant by informal means.

11 **I. PLAINTIFF'S MOTION FOR AN ORDER COMPELLING DISCOVERY (DKT. #32)**

12 Plaintiff's Motion seeks his own medical records to demonstrate the alleged injuries
13 caused by Defendant's use of excessive force, employee personnel files, and Plaintiff's
14 emergency grievances. Pl.'s Mot. (Dkt. #32). Plaintiff also requests an extension to complete
15 discovery. In his Response (Dkt. #34), Defendant notes that Plaintiff's Motion is untimely and
16 fails to comply with requirements set forth in the Local Rules regarding discovery motions and
17 requests for extensions of scheduled deadlines. Counsel for Defendant states that during
18 discovery Plaintiff served one set of interrogatories and three request for production of
19 documents, and that Defendant timely responded to all of them to the best of his ability given the
20 vague nature of the requests.

21 Defendant also suggests that Plaintiff's Motion may be moot to the extent it addresses
22 medical records and paperwork related to an emergency grievance because: (1) after counsel
23 communicated with prison staff, Plaintiff was allowed to use copies of his medical records for
24 litigation purposes; and (2) Defendant has been unable to locate any emergency grievance but
25 has produced copies of Plaintiff's non-emergency grievance. Def.'s Resp. (Dkt. #34) at 3–4.
26 Plaintiff did not address Defendant's contentions in a reply brief; however, he did file a
27 Supplement (Dkt. #36) to his Motion providing additional details regarding the documents he
28 seeks.

1 Rule 37 of the Federal Rules of Civil Procedure allows a party to file a motion to compel
2 only when a timely discovery request has been served, the opposing party has not responded or
3 has inadequately responded, and the moving party has attempted in good faith to resolve any
4 dispute about the adequacy of the discovery responses without court intervention. Specifically,
5 Rule 37 requires a party seeking to compel discovery responses to certify that he has, in good
6 faith, conferred or attempted to confer with the non-responsive party to attempt to resolve the
7 issue without court intervention. Fed. R. Civ. P. 37(a)(1). In addition, LR 26-7(b) provides that
8 no discovery motion will be considered unless the movant attaches a statement certifying that,
9 “after personal consultation and sincere effort to do so,” the parties were unable to resolve the
10 matter.

11 Additionally, a party moving to compel must provide the Court with the full text of any
12 discovery originally sought and the response to the request in dispute. *See* LR 26-7. The
13 purpose of this rule is to allow the Court to assess whether the request seeks relevant
14 discoverable information, and whether or not the opposing party’s response is adequate, or any
15 objection made is proper. Plaintiff did not provide the Court with this information so the Court
16 has no way to assess whether the discovery request called for the documents he now seeks,
17 whether the request was understandable or whether the Defendant provided a legally adequate
18 response. Further, the Motion does not include the required certification of good faith efforts to
19 resolve the discovery dispute without the Court’s intervention. Fed. R. Civ. P. 37(a)(1); LR 26-
20 7(b).

21 Plaintiff’s Motion was filed with the Court on March 4, 2015—the date discovery closed
22 and approximately two weeks after the deadline to file discovery motions, February 23, 2015.
23 As such, the Motion is untimely. Even if the Court were to consider the time for mailing,
24 Plaintiff signed and dated his Motion on February 26, 2015, which was already past the February
25 23rd deadline. Further, with regard to Plaintiff’s request for an extension of time to complete
26 discovery, the Motion does not include:

27 (a) A statement specifying the discovery completed by the parties
28 of the date of the motion or stipulation;

///

(b) A specific description of the discovery which remains to be completed;

(c) The reasons why such remaining discovery was not completed within the time limit of the existing discovery deadline; and

(d) A proposed schedule for the completion of all remaining discovery.

Scheduling Order (Dkt. #24) at ¶ 7 (citing LR 26-4). Plaintiff's Supplement (Dkt. #36) attempted to provide additional details regarding the documents he seeks. However, it still does not comply with the Rules outlined above. Based on these multiple deficiencies, Plaintiff's Motion to Compel is denied.

II. DEFENDANT'S MOTION TO STRIKE PLAINTIFF'S SUPPLEMENT (DKT. #39)

Defendant's Motion asks the Court to strike Plaintiff's Supplement to his motion to compel asserting that the filing is a fugitive document. Defendant contends that the Supplement is not authorized by the Local Rules, which only provide for a motion, response, and reply. *See* LR 7-2. "It is well established that district courts have inherent power to control their docket." *Ready Transp., Inc. v. AAR Mfg., Inc.*, 627 F.3d 402, 404 (9th Cir. 2010) (citation omitted). This includes the power to strike from the docket any improperly filed items. *See, e.g., id.* at 404–05; *Lazy Y Ranch Ltd. v. Behrens*, 546 F.3d 580, 586–87, 588 (9th Cir. 2008). Such power is indispensable to the court's ability to enforce its orders, manage its docket, and regulate any litigant's insubordinate conduct. *Adobe Sys. Inc. v. Christenson*, 891 F. Supp. 2d 1194, 1201 (D. Nev. 2012).

Here, Defendant's Motion fails to show how Plaintiff's Supplement interferes with the Court's ability to manage its docket or enforce its orders. Rather, the contents of the Supplement and circumstances of its filing indicate that Plaintiff may have simply mistitled the document and intended that the Court consider the Supplement as his reply brief. Although *pro se* litigants are required to follow the same procedural rules that govern other litigants, *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1986), allegations in a *pro se* complaint are held to less stringent standards than formal pleading drafted by lawyers. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007); *Hebbe v. Pliler*, 627 F.3d 338, 342 n.7 (9th Cir. 2010). Given this well-established principle, the Court will construe Plaintiff's Supplement as a reply brief in support of his motion to compel. The

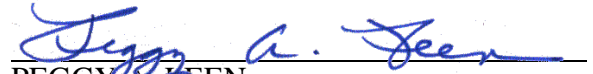
1 purpose and intent behind LR 7-2 is to prevent the parties from submitting endless volleys of
2 briefing to the Court in an attempt to get the last word. That purpose would not be served here.
3 Accordingly, Defendant's Motion to Strike is denied.

4 For the reasons explained above,

5 **IT IS ORDERED:**

- 6 1. Plaintiff Kenneth Patton's Motion for an Order Compelling Discovery (Dkt. #32)
7 is DENIED.
8 2. Defendant Ira Hollingsworth's Motion to Strike Plaintiff's Supplement (Dkt. #39)
9 is DENIED.

10 Dated this 14th day of July, 2015.

11
12 
13 PEGGY A. LEEN
14 UNITED STATES MAGISTRATE JUDGE
15
16
17
18
19
20
21
22
23
24
25
26
27
28